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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-1461

GENE THOMAS MEYER,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF SPECIAL APPEALS
OF THE STATE OF MARYLAND

WILLIAM E. SEEKFORD, ESQ.
Suite 1302 – The Penthouse
28 Allegheny Avenue
Towson, Maryland 21204
(301) 821-6868

Counsel for Petitioner

THE PAUL M. HARROD COMPANY, BALTIMORE, MARYLAND 21234

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PETITION FOR A WRIT OF CERTIORARI
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Gene Thomas Meyer, Petitioner, Prays that a Writ of Certiorari issue to review the judgment of the Court of Special Appeals of Maryland, entered in this case on October 9, 1979, and for reasons therefore state:

OPINIONS BELOW

Gene Thomas Meyer was convicted of First Degree Murder of one individual and Second Degree Murder of another following a jury trial in Prince George's County, Maryland, docketed as number 18, 621. Sentences of life imprisonment and thirty (30) years imprisonment, to be served consecutively, were entered on June 6, 1978. It is an unreported jury verdict save for the trial court file in the case. Opinions for pre-trial and post-trial motions, before the trial court, are set forth in Appendix "A" herein.

Meyer appealed, as of right, to the Court of Special Appeals of Maryland which appeal was heard by a three-judge panel of that Court, docketed as No. 689, September Term, 1978. That Court, in a published opinion filed October 9, 1979, affirmed the convictions and judgment, _____ MD. APP. _____, 406 A.2d 427. That Court issued its mandate finalizing that opinion on November 8, 1979. The opinion is set forth as Appendix "B".

Meyer filed a timely Petition For Writ of Certiorari to the Court of Appeals of Maryland. The Petition was docketed as No. 348, October Term, 1979. The Court of Appeals by written, but unpublished, Order denied certiorari on December 20, 1979. Copy of that Order is set forth as Appendix "C".

JURISDICTION

The Opinion of the Court of Special Appeals of Maryland affirming the judgment of the trial Court was entered on October 9, 1979, with mandate of judgment entered on November 8, 1979.

The Order denying Certiorari by the Court of Appeals of Maryland, in a timely Petition, was entered on December 20, 1979. The state decision thus became final. *Chicago G.P.R. Company v. Basham*, 249 U.S. 164.

This Petition for Certiorari is filed within ninety (90) days of said date. The jurisdiction of this Court is invoked under *28 U.S.C., § 1257 (3).*

QUESTIONS PRESENTED

1. Should the two statements of Petitioner, which were taken after his arrest upon warrant and without counsel, have been suppressed as violative of the Fifth, Sixth and Fourteenth Amendments?

2. Was the in-court identification and the pre-trial photographic identification, under the circumstances presented, tainted and so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification of Petitioner contrary to the Fourteenth Amendment and therefore should not have been admitted?

3. Does a wife under the Fifth, Sixth and Fourteenth Amendments possess the power to exercise the right of her husband to obtain counsel, at the time the husband is unable to do so as he is then undergoing post-arrest interrogation and held incommunicado by the police without counsel?

CONSTITUTIONAL, RULES AND STATUTORY PROVISIONS INVOLVED

The pertinent provisions of the *Fifth, Sixth* and *Fourteenth Amendments* to the *Constitution of the United States* and the provisions of *Maryland District Court Rules 711 and 723* are set forth in Appendix "D" attached hereto.

STATEMENT OF THE CASE

Because of the fact that the Pre-trial Motion hearings are vital to this Petition and were conducted on various days from March 15, 1978, to April 17, 1978, and consumed 513 pages of transcript with a trial lasting from April 20, 1978, through the night of April 26, 1978, consuming some additional 880 pages of transcript the pertinent facts vital to consideration of this court are substantial in amount. A distillation of pertinent ones are as follows.

On September 23, 1977, at about 7 p.m. a mother and daughter were discovered dead as a result of multiple stab wounds in their home at 4807 Raemore Lane, Bowie, Maryland.

IDENTIFICATION – During the subsequent investigation, and 15 days after the observation, six photographs were presented to one Darlene R. Brown, a 13-year-old neighbor who resided at 4804 Raemore Lane for identification of a man she observed walk up decedent's driveway from her own driveway the afternoon of the crime, across the street and one house up the hill. This observation of several seconds, was a right-profile view of the individual over the rear of a truck and by

estimates some 150 feet distant from across the street, and one house down while she was walking out of her home.

The six photographs given her were of male individuals standing against a wall taken near a door inside the Bureau of Criminal Investigation (B.C.I.) of the Prince George's County Police. One of the photographs was of the Petitioner who was the tallest of the six and the only one with hair long enough to be down over his ears nearly to his neck in back, taken several hours after arrest and during questioning. Meyer also had no mustache and his picture was number one. The remaining five photographs consisted of detectives working out of B.C.I. and several of which worked on the murder investigation; and of these, several met and were known to the witness given the photographic display. At least one had a mustache and the second either had a mustache or a blemish on the picture giving the appearance of one. Each of the police officers pictured in the photographs had hair cuts away from the ears and were in conformance to police department regulations. This witness admitted during police questioning she remembered mostly the hair of the man she observed.

Miss Brown at trial testified that after viewing the six photographs she had told the investigating officers she wasn't sure and had chosen none. She was then asked to try again and to eliminate those she could. She started off eliminating the police officers she knew and although it took a while, she finally picked out Petitioner's photo after also eliminating two others as having mustaches.

Also, at trial, a hearing was conducted out of the presence of the Jury, upon an in-court identification by Miss Brown.

After preliminary information and qualification, Miss Brown, on the witness stand, was advised to take her time, look around the courtroom and, if she wished, to step down and walk around the courtroom and to identify the person she saw walking up the decedent's driveway if that person was in the courtroom. She was told to take "as much time as you like." The witness then had all the few males stand up in the courtroom and after a period of time be seated. She was then asked if she saw that person. She replied, "I have a pretty good idea." She was asked, "are you sure" to which she responded, "yes". She then pointed out David H. Martin, Esquire, co-defense counsel of Petitioner as the person she saw the day of the crime.

The state, after the identification had already been made, objected to the procedure employed as being unfair. As a result, over objection, the court permitted the state to attempt a second identification. The witness, meanwhile, did not admit making any mistake in the first identification, or of now observing a different person in the courtroom she wished to identify or even stating the first man she previously identified was not the person she observed on the date of the crime.

During this second identification procedure, which lasted some 25 minutes from 11:57 a.m. to 12:22 p.m., all of the several males were again required to stand and were slowly eliminated one by one until two persons were left standing,

i.e., down to Mr. Martin, who she previously identified, and the Petitioner. Evidence was presented by Meyer's counsel in objecting to this attempt at a second identification during that 25-minute period, the witness had eye contact and some form of communication with several members of the courtroom audience, and two ladies in particular, who were forming words with their mouths and by looking in the direction of the Petitioner in the courtroom as well as a shocked expression displayed on the face of the witness. Evidence of this was presented by sworn testimony from witnesses such as a deputy sheriff, a television news reporter, three attorneys in the room, and one clerk. Gene Meyer was the only one in the courtroom who was depicted in the six photographs previously shown her. The prosecution offered nothing to the contrary regarding this evident coaching of this identification witness.

With all this evidence of impermissible suggestiveness and of taint, with the two men standing, Miss Brown asked, "Could the person have changed in any way?" The Court then stated, "In what way are you asking?" Miss Brown stated, "Say–I am not sure whether–I am –." And after identifying the Petitioner the Court asked her, "Is that the gentleman? Is that the gentleman?" She replied, "Yes, I think so." This was over and above the Court foreclosing the right of defense counsel to fully cross-examine the witness regarding the extra-judicial pre-trial photographic identification.

STATEMENTS – The Petitioner during the pre-trial hearing seeking suppression of the two statements was shown to have been arrested, upon an arrest warrant at approximately 7 a.m. Saturday, October 8, 1977, at his home when awakened from his bed by the police. He was taken into custody at the point of a shotgun in the presence of numerous armed Prince George's and Montgomery County police officers. Meyer was

handcuffed to his rear and, with two police officers, was driven while being questioned, in a police car to the B.C.I., arriving approximately 8 a.m. Detective David Hatfield at B.C.I. commenced questioning Meyer at about 10 a.m. and continuing until 3:45 p.m. without being taken before a judicial officer, resulting in a statement signed by Meyer at 3:45 p.m. Normal processing at B.C.I. was shown to require only 30 minutes at most. That statement was mostly, but not entirely, exculpatory for it made some damaging factual admissions.

That statement (first statement) was signed nearly 9 hours after arrest and after questioning commenced and about 7½ hours after the time required for normal processing procedure. Although Meyer was not taken before Judicial Commissioner Michael J. O'Brien until 4:20 p.m. in Upper Marlboro, the trial Court took judicial notice that a Judicial Commissioner was available 24 hours a day 7 days a week which was in addition to testimony by the interrogating officer that he had no intention of interrupting interrogation to take Meyer before a Judicial Commissioner. Judicial Commissioners in Maryland determine probable cause, set bail, and give advice of rights to counsel, commit to place of incarceration, and other judicial duties are completed.

As to the testimony given for the events up to this point, Detective Hatfield stated that he read Meyer the Miranda warning card after placing him in the police car with himself and Detective Frank Gale. He also advised he did not ask Meyer if he waived those rights. Detective Gale however heard no such advise of rights. Meyer also heard no Miranda rights.

During the period of questioning at B.C.I., the officer admitted the interrogation room was adjacent to the polygraph room. He stated that Petitioner never personally requested a

lawyer. Meyer testified however, that he asked for his wife to get a lawyer for him at his home in front of the police when he was arrested and handcuffed and repeatedly thereafter asked for an attorney during that first 9 hours of interrogation. Meyer testified further that Detective Hatfield turned the lights out in the room and he could see the polygraph room through a one-way glass wall. He testified that he was asked to take a lie detector test which he agreed to do if he could have a lawyer. Meyer further testified that he was physically and verbally abused and informed that if he refused to take a lie detector without an attorney, that would "prove you are guilty as hell". He had his arm handcuffed to a handcuff bolted to the floor at all times. The handcuff being bolted to the floor was admitted by the police but they stated that Meyer was handcuffed to it only for short periods of time and not continuously.

Meyer further testified that he repeatedly asked to contact an attorney as well as his wife but was refused. In addition, Meyer testified that Detective Hatfield informed him he had given Meyer's wife the confession of a co-defendant and that Mrs. Meyer had stated, "Do with him what you want to". Meyer's clothes which were put on at the time of arrest included shoes without socks, trousers and an undershirt without an outer shirt. He had no breakfast, lunch or dinner up to and for at least some time after the end of the 9 hours of questioning although he had been taken from his sleep at 7 a.m. and had not eaten since the day before. The Petitioner, at about 4 p.m. after the first statement, was then driven with handcuffs to the rear by Detective Michael G. Ferriter to Judicial Commissioner O'Brien's office in Upper Marlboro arriving at about 4:15 p.m. The arrest warrant was cepied at 4:20 p.m. and they left O'Brien's office at 4:40 p.m. to go back to B.C.I. arriving shortly after 5 p.m. and again placed directly in an interrogation room. He was handcuffed to the rear during

all of the transports following his arrest. The officer estimated the time before the commissioner for the probable cause finding, determining of bail issues, advice of rights, writing commitment papers and reading charges as being 5 minutes, and when driven back and placed in the interrogation room at B.C.I., Meyer admittedly had his arm handcuffed to the floor and was placed there for further interrogation.

Detective M. K. Morrissette testified that after returning to B.C.I. while Meyer was allegedly eating, he questioned Meyer for about a half an hour regarding his personal, family and work history and stated he had read him his Miranda rights on a card and that Meyer said he would give a statement without a lawyer present. This was vehemently disputed by Meyer.

Meyer was questioned for the next three hours or until about 9 p.m. and some 14 hours after arrest when the detective stated he obtained an oral statement. After a break until 9:20 p.m., the oral questioning ceased at which time a typewritten statement (second statement) was commenced concluding at 10 p.m. or 15 hours after his arrest. After the statement Detective Morrissette presented to Meyer for signature a written "Waiver of Rights" which Meyer refused to sign. This second statement was inculpatory.

Detective Morrissette testified that he did not threaten, use force or make promises to Meyer during the questioning, but admitted he did not tell Meyer of Mr. Martin the lawyer his wife obtained attempting to speak with him. Morrissette also testified that at the conclusion and signing of the statement he then conferred with a superior and subsequently typed on the statement as to whether Meyer had been told his constitutional rights by the judicial commissioner to which Meyer replied, "I don't remember if he did or not."

It was admitted by the police that the normal procedure in interrogation is to give the arrested party a written "waiver of Rights" form and have him sign it *before* taking a statement. That was not done in this case. It was asked of Morrissette, "were you going to get a statement from him under - - as best you could" the Detective replied, "Yes".

Commissioner O'Brien testified that when Meyer appeared for his judicial hearing he read him certain rights which he repeated in Court. With the exception of the first sentence, the reading appeared to be a verbatim quotation of M.D.R. 706 e6 as it existed prior to July 1, 1977, which had been repealed at the time and replaced by M.D.R. 711 a. The statement set out in Rule 711 a. was not given Meyer. Commissioner O'Brien's advice of rights is set out with Appendix "D".

Commissioner O'Brien advised Meyer that if he was not able to afford an attorney for him to contact the Public Defender's Office in Upper Marlboro, Maryland. The Commissioner did not ask then if he wished an attorney. This being a weekend the Public Defenders Office was not open until Monday morning or 2 days later at the Upper Marlboro County seat and Meyer had no way of contacting the Public Defender. O'Brien then signed a commitment order for Meyer to be placed in the Prince George's County Detention Center. The police, however, did not take him there under the judicial order, but took him instead back to B.C.I. for further interrogation. Both the Public Defender's office and the Detention Center were located at Upper Marlboro. Meyer testified the police told him they were keeping him for the weekend at B.C.I. B.C.I. is located some distance away from Upper Marlboro.

COUNSEL – With respect to the issue of counsel and the police assertion that Meyer either did not request an attorney or waived his rights to one, the following additional facts are set out here.

David H. Martin, Esquire, a member of the Maryland Bar and former associate counsel to the U. S. Secret Service testified at the suppression hearing that on the day of Meyer's arrest he was contacted by Meyer's wife to represent her husband who was arrested that day and to locate and speak with him. At 5:30 or 6:00 p.m. some 4 hours before the second statement, Martin called B.C.I., confirmed with the officers that Meyer was there, and then requested to speak to Meyer advising the B.C.I. police officer that he represented Meyer. The officer informed attorney Martin that he could not talk to Meyer on the telephone at the time as he was then eating and as a result was not available. The detective stated that if Meyer wanted to talk to Attorney Martin, he would have Meyer call back. Martin left his telephone number and awaited Meyer's call.

After receiving no return telephone call as requested and after a half hour had passed, Martin called back again to B.C.I. at which time he was advised by the Detective, untruthfully, that Meyer was not there, at B.C.I. but that he had been taken to the County Detention Center which also was not true. Martin then called the Detention Center in an effort to locate Meyer and he spoke to Sergeant Oertly who advised if Martin wished to know if Gene Meyer was there he would have to come there in person. Martin left his home and drove for about 45 minutes to arrive at the Detention Center at 8:30 p.m. After checking the Detention Center it was learned Meyer was in fact not there. Martin then drove to B.C.I. where he

observed two detectives walk out out of the interrogation room and he asked to see Meyer. Those detectives untruthfully again informed Martin that Meyer was not there, but was at the Detention Center. Martin drove back to the Detention Center and again found Meyer was not there. He called back to B.C.I. at about 9:30 to 10:00 p.m. and was again untruthfully told Meyer was not at B.C.I. He was informed that Meyer left B.C.I. to go to the Detention Center. Meyer did not arrive until about 10:15 p.m. and after the second statement was obtained. Attorney Martin was prevented from seeing Meyer for some 4½ to 5 hours after requesting to see his client (until after the second statement was obtained) and during which time the police continuously questioned Meyer.

Additionally, a friend of the family testified that he, his wife, Meyer's wife, and her mother and another person went to B.C.I. before noon the day of his arrest to see Mr. Meyer. A detective there would not permit Meyer's wife or others to see Meyer since he was still being interrogated. The officer, after a 2-hour wait at B.C.I. by these friends, relations and wife, told them it may take five more hours and they should go home. Meyer's wife asked the detective if her husband had a lawyer yet but the officer said no. At about 1:30 p.m. over 8 hours before the second statement, Mrs. Meyer asked the detective if she could get an attorney for her husband, but the Detective told them no, that her husband had to ask for a lawyer himself and she couldn't get a lawyer for him.

Meyer, in testifying concerning the statement signed at 10:00 p.m. stated that he was continuously handcuffed by one arm to the floor, asked repeatedly for an attorney, permitted no telephone calls, struck in the face, cursed, told he had no

rights, that he was a crazy man, told he would get a lawyer sometime after the weekend when he would be taken to the Detention Center, he was never informed of his wife or Mr. Martin the attorney trying to see him, and not being fed until he signed the second statement at 10:00 p.m. Meyer also refused to sign the waiver of rights to counsel form when he attempted to read it and it said he was waiving his rights. Meyer testified he wasn't told and he didn't know he could ask the detective to quit interrogating him. Meyer testified also to the following. That Detective Morrissette informed him before getting him to sign the second statement that he was charged with two counts of murder and that the officer had the power to change that, but in January they are going to "drop the pill on you." Morrissette informed Meyer that he had the power to get Meyer into an asylum for two or three years to cure what was wrong with him and he would then be back on the streets again. Meyer also testified he did not know what a District Court Commissioner was and didn't know he could tell the Commissioner of the abuse.

The trial Court, after the Motion Hearings, found that when Meyer was taken before the Commissioner it was less than 24 hours after arrest. Further that the state met its burden of showing the delay was necessary under the circumstances as to the statement. The Court felt the second statement was freely and voluntarily given after a time of reflection and deliberation and was the subject of a free mind, without any unlawful coercion or physical restraint and denied the Motion to Suppress. With respect to the first statement signed at 3:45 p.m., the Court found that this was not an inculpatory statement and would therefore not be suppressed! The Court then ruled the photographs were not impermissibly suggestive. They were admitted at trial over objection as was the two statements. A Motion for New Trial was denied.

On direct appeal the Court of Special Appeals determined that the trial Judge believed the officer's version of events and the trial decision was not reversible except for manifest abuse of discretion. The Appellate Court stated that Meyer on appeal did not challenge the statements for voluntariness or adequacy of waiver of Miranda rights. The Appellate Court then held that the first statement was violative of Rule 723 but was convinced beyond a reasonable doubt that the improper admission of the first statement was harmless. The second statement was found to be an independent act and a product of deliberate reflection, noting that the refusal by Meyer to sign the waiver of rights revealed that Meyer was fully cognizant of his actions at the time and agreed with the trial Judge, distinguishing the decision in *Johnson v. State, infra*. All other appellate claims were rejected.

Meyer filed a timely Petition for Writ of Certiorari to the Court of Appeals of Maryland which Petition was denied.

HOW FEDERAL QUESTIONS ARE PRESENTED

Petitioner filed a timely pre-trial Motion to Suppress Statements claiming therein that:

> ". . .
> 5. That these statements were unlawfully obtained from Defendant, Gene Thomas Meyer, because he did not adequately understand his constitutional right to remain silent, because he did not knowingly and voluntarily waive his constitutional right to remain silent, and because his statements were not voluntarily made.

6. And for such other and further reasons as may be stated at the hearing on this Motion, which is respectfully requested.

. . .

"AUTHORITIES

Wong Sun v. United States, 371 U.S. 471 (1963)

Miranda v. Arizona, 384 U.S. 436 (1966)

. . ."

A Supplemental Authorities was filed reciting the *Fourteenth Amendment* and citing *Mallory v. United States*, 354 U.S. 449 (1957); *Mallory v. Hogan*, 378 U.S. 1 (1964).

Petitioner also filed a timely pre-trial Motion to Suppress Identification claiming therein that

". . .

5. That such identification was the product of the unlawful detection and arrest and also constituted a denial of defendant's right to counsel and to due process of law.

6. And for such other and further reasons as may be stated at the hearing on this motion, which is specifically requested.

. . .

"Authorities

Moore v. Illinois, No. 76-5344 (U.S. Sup. Ct. 12-12-77)

Simmons v. United States, 390 U.S. 377 (1968)

Wong Sun v. United States, 371 U.S. 471 (1963)

. . ."

At trial, the Court ruled the statements and identification admissible rejecting the *Fourteenth Amendment* claims.

On appeal to the Court of Special Appeals of Maryland, Meyer was then represented by a State Public Defender. The issues raised upon appeal were:

1. The trial judge erred in denying Appellant's motion to Suppress statements taken during a detention in violation of M.D.R. 723.

2. The trial judge erred in denying Appellant's motion to suppress an in-court identification which was made under impermissibly suggestive circumstances.

3. The trial judge erred in overruling Appellant's objections to the introduction of numerous inflammatory color photographs of the crime scene and the autopsy.

4. The trial judge erred in overruling Appellant's objection to certain portions of the autopsy report.

5. The trial judge erred in denying Appellant's motion to suppress evidence resulting from an illegal seizure of Appellant's car.

6. The trial judge erred in his instructions to the jury.

And under "Relevant Constitutional Provisions and Rules" Meyer set out the *Fourth*, *Sixth*, and *Fourteenth Amendments, inter alia*.

That Court in a footnote states that Meyer did not challenge the voluntariness of his statements of the adequacy of his waiver of his *Miranda* rights.

In his Petition for Writ of Certiorari to the Court of Appeals of Maryland, Meyer presented the following questions:

1. Did the trial judge err in denying Appellant's Motion to Suppress Statements taken during a detention in violation of M.D.R. 723?

2. Under the circumstances and evidence presented, did the trial judge err in denying the suppression of an in-court identification and photographic identification due to impermissibly suggestive circumstances and pre-trial taint?

3. Did the trial judge err in denying Appellant's Motion To Suppress evidence illegally seized?

4. Did the trial judge err in denying Appellant's Motion to Suppress Statements taken in violation of the Fourteenth Amendment, Article 21, Maryland Declaration of Rights and his right to Counsel?

5. Did the trial judge err in denying Appellant's Motion to Suppress Statements taken in violation of the Fifth and Fourteenth Amendments, Article 23 of the Maryland Declaration of Rights and his right to remain silent through unlawful force, coercion, compulsion threats and promises?

Meyer also presented argument against his waiving on appeal claims of denial of counsel, forcible confession and Miranda rights.

The Pertinent Constitutional provisions asserted for the Petition was the *Fifth, Sixth* and *Fourteenth Amendments*.

REASONS FOR GRANTING THE WRIT

I.

THE TRIAL JUDGE ERRED IN REFUSING TO SUPPRESS EACH OF THE STATEMENTS.

A. THE FIRST STATEMENT

Maryland has enacted a Rule of Court designated as *Maryland District Rule 723* (M.D.R.) which virtually adopts the federal rules and requires a person arrested to be taken "without unnecessary delay" before a Judicial Commissioner and in any event to do so at the next session of court or at the maximum within 24 hours of their arrest. The adoption of this rule, however, merely codified the existing common law and Maryland rule that required a defendant to be taken before a magistrate "without unnecessary delay". *Twilley v. Perkins*, 77 Md. 252, 265, 26 A. 286; *Johnson v. State*, 282 Md. 314 (1978), 384 A.2d 709. In construing this rule as mandatory the Court in *Johnson* stated that it was intended to bolster *inter alia* several constitutional guarantees; the right to be allowed counsel and appointed counsel citing *Gideon v. Wainwright*, 372 U.S. 335; the *due process* right to be free from coercive investigatory methods citing *Brown v. Mississippi*, 297 U.S. 278. The Court in *Johnson* held that the rule was mandatory and violations were punished by exclusion of its products, including confessions. It matters not whether statements were taken within 24 hours of arrest if the time of delay was unnecessary or was after the first session of court next. Citing *Mallory v. U.S.*, 354 U.S. 449, 454; *McNabb v. U.S.*, 318 U.S. 332.

The first statement taken here, after 9 hours of interrogation prior to Meyer being taken before a commissioner following his arrest upon warrant, was violative of *M.D.R. 723* and *Johnson v. State*, 282 Md. 314. The trial Court, however, found that statement largely exculpatory and that the delay was necessary. See pre-trial and post-trial rulings in appendix. The appellate Court however found no such necessary delay in taking Meyer to the judicial officer and found that statement was not truly exculpatory for if it was it would not have been submitted by the prosecution and it in fact furnished incriminating facts.

Meyer contends, as the appellate court noted, that the statement was not truly exculpatory, since it admitted his meeting the co-defendant at the Lewis' (decedent's) home the night before the murders, and his ownership of the briefcase and suit. Further it was a precourser of a continuous uninterrupted interrogation infecting the second statement taken some 6 hours later. Meyer also admitted a good many unknown details concerning his co-defendant (Lon Lewis, husband and father of the decedents) and Lewis' paramour in Texas. This exposed him to admitting facts which were brought out at trial when the statement was admitted. It has been recognized by this Court that when statements are truly exculpatory the prosecution would never use them. *Miranda v. Arizona*, 384 U.S. 436, 477 quoted in *Milhouse v. State*, 31 Md. App. 576, 358 A.2d 262, 265; *Johnson v. State*, supra, and the appellate opinion below (slip op. 6). The appellate court below found the first statement admission to be error but then found such error harmless in view of the second statement and the identification. The issue of harmless error *vel non* is discussed below.

B. THE SECOND STATEMENT

This statement was taken some 6 hours after the first statement, 15 hours after arrest, and again without counsel. As noted in the Statement of the Case, supra, Meyer had not eaten from the previous day and had been taken from his sleep at arrest. That is he was without food until at least 5:00 p.m. that evening or 10 hours after his arrest if the police are to be believed. If Meyer is to be believed, he was not fed until 10:00 p.m. or 15 hours after arrest. Clearly, the second statement was tainted and flowed from the first one.

In any event, it was admitted at the trial level by the police that immediately thereafter he was handcuffed to his rear and transported in a police car to visit a judicial officer for reading of the charges, completing provisions of advise of rights, review of bail, filling out forms, and personal history which lasted according to the police, only 5 minutes. He was taken still handcuffed to his rear, not to the detention center as ordered and where he was advised to contact a public defender who was nearby, but back to the same B.C.I. admittedly for further interrogation. There was no independent act intervening, occurring after a time for Meyer to have deliberate reflection, and liberating his will, free from the previous taint of the illegal detention. *Mallory v. U.S.*, 354 U.S. 454; *Miranda v. Arizona*, 384 U.S. 436; *Haynes v. Washington*, 373 U.S. 511. Admittedly the officers were going to get a statement from Meyer "as best they could." In doing so, they accomplished this by holding him incommunicado against all the efforts of Meyer, his wife, his counsel, and his friends. This continued even to the point of telling Meyer's counsel that he was not at B.C.I. while he was being interrogated and by sending that counsel to other areas on a wild goose chase to look for Meyer.

his client, apparently so as not to be present at the interrogation and able to consult with and advise Meyer. Such incommunicado detentions have repeatedly been condemned when done to extract a confession. *See Haynes v. Washington*, 373 U.S. 511; *Lynumn v. Illinois*, 372 U.S. 528, 534; *Escobedo v. Illinois*, 378 U.S. 478. With respect to this second statement and in addition to the above reasons for suppression Meyer urges the following.

Meyer testified he was placed in a room adjacent to a polygraph machine which was admitted by the police. He also testified he was asked to take the lie detector, again admitted by the police. Meyer further testified that the room lights were turned off and he could see through a glass window into that other room and see the machine. He testified of his willingness to take the lie detector if he could have his attorney present, but that the officer stated conditioning the request for an attorney was an admission of guilt and that therefore he was guilty as hell. No police testimony refuted this. The trial Court did not make the required finding of facts upon the disputed facts nor upon those undisputed. *Escobedo v. Illinois, supra; Miranda v. Arizona, supra;* nor did the Court properly review the facts for legitimate intervening circumstances *Johnson v. Louisiana*, 406 U. S. 356, 365; *Brown v. Illinois*, 422 U.S. 590, 603-4.

Meyer's co-defendant, who was tried separately and appealed separately independently raised these same allegations in his case. The appellate court however, reversed upon different grounds (*Lewis v. State* ___Md. App. ___, 404 A.2d 1073). The Court there however went further and found the trial court had not made finding of fact on the lie detector and

other coercive issues and instructed the trial court on remand to resolve those issues in the retrial. In the instant case likewise, the trial Court did not adequately resolve the factual dispute, although generally concluding the statements were voluntary notwithstanding Meyer's allegations of being handcuffed by one arm to the floor, other force and coercion such as being struck, threatened, coerced, denied counsel and intimidated.

The appellate court below found also that the magistrate gave Petitioner the full advice to rights as mandated under the rule. A reading of what the magistrate testified to however, belies this. Significantly, Meyer did not know if they were read to him or not. The most important aspect of the magistrates informing Meyer was that if Meyer needed a public defender one could be contacted in that community and where he was being committed by judicial order, but the magistrate did not inquire if Meyer wished an attorney nor did he offer the use of the telephone in order to contact an attorney after a copy of the papers were delivered to him. He was not told specifically that any statements he made could be used as evidence against him; the right to the presence of an attorney during questioning. *Miranda v. Arizona, supra.*

The appellate court recited the following in support of its finding that the second statement was "an independent act and a product of deliberate reflection." That Court found the first statement was *essentially* exculpatory and noted the cessation of interrogation after the first statement was obtained to be transported to and from the magistrate as a break in interrogation during which a steak dinner was purchased and taken to B.C.I. The Court assumed that Meyer ate at the time contrary to Meyer's claim of eating after the second statement. The appellate court found questioning to have

re-commenced after 2 hours from his appearance before the magistrate. However, this overlooks the fact that Meyer was handcuffed to the rear during transport, placed back in the interrogation room handcuffed to the floor and admittedly questioning of him regarding background, employment and family occurred almost immediately and during the time of the alleged meal so that by police testimony he did not have a 2 hour break in questioning. The second statement therefore was a product of and directly flowed from the uninterrupted subjugation of Meyer's will in a manner so as to prevent independent reflection. It was not gained "by means sufficiently distinguishable to be purged of the primary taint," *Wong Sun v. United States*, 371 U.S. 471, 486-8, *Johnson v. Louisiana*, 406 U.S. 356, 365 *Brown v. Illinois*, 422 U.S. at 600-4.

C. WAIVER

At trial Meyer had private counsel, who vigorously asserted the denial of counsel *Miranda* warnings and rights as well as the imposition of coercion, threats, and continuous interrogation. At the conclusion of trial and sentencing Meyer was indigent and the State provided a government employed public defender to prosecute his appeal.

That public defender admittedly did not present in the appellate brief specific argument on the issue of the denial of counsel, and the voluntariness of the question.

Meyer, however, contends that he had no control over the preparation of the appeal brief and was never provided a copy of it until after it had been presented to the appellate court. As soon as that decision was entered, Meyer's family obtained

private counsel to seek review in Maryland's highest Court by Certiorari raising these issues and arguing in that Petition that- (1) the points were reasonably encompassed within question number one; (2) that the trial court affirmatively ruled upon the points and therefore by rule they are open for review on all appeals; and (3) the points were not waived. No ruling upon waiver was obtained since Certiorari was denied. Therefore the issue of waiver can be raised here.

This Court has many times held that waiver of constitutional rights will not be lightly inferred and often times must be shown affirmatively in the record. Waiver requires the knowledge of the right and a knowing and intelligent waiver thereof. In the circumstances here presented where the same government that prosecutes the individual provides an attorney who fails to raise a critical if not the most critical points on appeal, this Petitioner cannot be penalized under principles of waiver under the *Fourteenth Amendment.*

In the Court below, nearly half of the transcript was taken up by a pretrial Motion to Suppress the statements and photos. A written Motion with authorities and a supplementary memorandum was filed on those points. The trial Court ruled upon those points and such ruling was preserved for appellate review, Rule 813. However, the Public Defender put only one question before the Court of Special Appeals on this point. Meyer contends herein that this was error of counsel and in any event the points raised in the trial Court and here are fairly encompassed within the question merely describes and modifies the type of detention. This is especially so where Meyer relied upon the public defender for his appeal and the severity of the conviction and sentence.

Meyer asked this Court to grant review of these questions in the interest of justice as it has the power to do where the points were determined and preserved for review at the trial level.

II.

PETITIONER WAS DENIED RIGHT TO COUNSEL UNDER THE SIXTH AND FOURTEENTH AMENDMENTS

Meyer asserted that he, upon arrest, asked his wife to call an attorney for him. It was alleged by Meyer that he many times asked to have an attorney or to be able to call one but was refused. He was never advised of his relatives and friends at B.C.I nor the presence of the attorney his wife had obtained for him. This procedure is remarkably a replay of *Escobedo v. Illinois, supra* where such procedures were condemned. It appears the play is the same with only a change in actors and time. Similarly it is violotene of their Courts decision in *Messiah v. U.S.*, 377 U.S. 201. The police merely stated Meyer never asked for an attorney and orally waived the right to one as justification but confirming that Meyer refused to sign a writeen waiver of counsel when asked to.

Meyer's wife, relatives and friends were not permitted to see him nor could he have an attorney see him.

Meyer's wife retained David Martin who attempted to see him as well as talk to him on the telephone. Martin was refused the right to talk to him and when he tried for several hours prior to the second statement, Martin was falsely told Meyer

was not at B.C.I. but in the County Detention Center so that Martin did not see his client for several hours and then only after the second statement.

Meyer contends that, although the right to counsel is ordinarily personal to him and that he can knowingly and intelligently waive such right, he was prevented from contacting an attorney in all instances. Meyer requests this Court to determine, under the circumstances presented, that when a defendant's wife, with whom that Defendant is then living, seeks to exercise her husband's right to counsel that she may be the moving force. Further that the police be required to permit that counsel to meet the Defendant and permit that Defendant to reject such counsel or at the minimum waive the right to that counsel. This is true since the wife is a separate individual, she and her interests are integral with that of her husband and if the attorney is waived the often conflicting versions of waiver are resolved. Further this would enhance the underlying precepts of *Escobedo* and *Miranda, supra.* Finally, no harm to good law enforcement can be maintained. This also eliminates the need to determine the truth of claims of prisoners who have no witnesses to verify their version without the eye of interested parties.

III.

THE PHOTOGRAPHIC AND IN COURT IDENTIFICATIONS WERE TAINTED AND IMPERMISSIBLY SUGGESTIVE AND SHOULD NOT BE ADMITTED UNDER THE FOURTEENTH AMENDMENT

The primary evil to be prevented in a photographic identification or in court identification is a substantial likelihood of misidentification. And it is the likelihood of a misidentification which violates a defendant's right to due process." *Neil v. Biggers*, 409 U.S. 188, 198; *Manson v. Braith Waite*, 432 U.S. 98. Several factors as applied here clearly show not only a substantial likelihood of a misidentification but an actual misidentification that was not retracted by the witness nor did she affirmatively admit any mistake. It does not take some 25 minutes to view approximately 10 males and make an identification. This is so notwithstanding the identification of the wrong man and coaching of the witness to identify Meyer as testified to by at least 6 independent witnesses in the courtroom who observed it.

This identification was given to the jury over objection contrary to the *due process* provisions of the *Fourteenth Amendment.*

CONCLUSION

This Court is presented here with a claim that police deliberately prevented counsel to see and advise his client and be present during questioning just as the attorney in *Eseobedo* was. The other claims presented go to the heart of confession and identification issues historically upheld by this Court. In defense to the lower appellate Court and its determination Petitioner asserts the *Miranda* and confession coercion claims were not waived by him through government appointed counsel but in any event they are reasonably encompassed within the question presented and the constitutional citation supporting such question.

Petitioner therefore prays this Honorable Court grant Certiorari herein and reverse the judgment below.

Respectfully submitted,

William E. Seekford, Esquire
Suite 1302 - The Penthouse
28 Allegheny Avenue
Towson, Maryland 21204
(301) 821-6868
Counsel for Petitioner

APPENDIX A

TRIAL COURT RULING ON PRE-TRIAL MOTIONS TO SUPPRESS

(Tm. 505)

THE COURT: All right, Madam Clerk. There are three remaining Defendant's motions that I must rule on prior to the trial on this case, assuming that there is a trial in this case. First is the suppression of the statement taken by the police from the Defendant, which is what, Mr. DePaul, number what?

MR. DePAUL: Four is the statement taken by Hatfield.

THE COURT: All right. Six. Defendant's No. 6, which is a statement that was taken subsequent to his being taken before a commissioner who has testified before me what his usual procedure is in regards to a prisoner.

Prior to the earlier hearing, or subsequent to the earlier hearing and today's hearing, the Court of Appeals, on April the 6th, 1978, issued the case of Johnson v. the State (Tm. 506) of Maryland, wherein they established a certain procedure that must be followed by the police in furtherance of Maryland District Rule 723 a. Wherein, the rule sets up that the fact that a person must be taken without unnecessary delay before a commissioner, and in no event more than - - more than 24 hours after arrest or the first session of court following arrest, and so forth. Then they use the words that, number one, that they find that anybody who has been taken after the 24-hour period, the statement is excluded automatically. And when the delay

in presentment falls within the outer limits, it's incumbent upon the trial court to determine whether the State has met its burden of showing that the delay was necessary under the circumstances of the particular case.

In this case we have a Defendant being taken before the commissioner nine hours after his arrest. However, the evidence does not show that any inculpatory statement was taken from the Defendant in that nine-hour period. The inculpatory statement that was taken from the Defendant was taken subsequent to his being taken before the commissioner, and after a time for eating and a time for reflection, and a time for deliberation. It is my judgment that the Johnson v. State of Maryland case is distinguishable from the facts in this case in that the State did comply with the requirements of this rule, that they did take him before a commissioner. Under the circumstances of this particular case, in that case, (Tm. 507) Johnson v. State of Maryland, is not applicable to the case at bar, because I feel that there was a deliberation, a time for reflection by this Defendant as to whether or not to continue with the interrogation. And he was further advised of his Mirdana rights at the time of his appearance before the commissioner. Therefore, I do not feel that this case is applicable to the inculpatory statement which was taken between the hours of six and nine, and reduced to writing at approximately 9:00 p.m. on the night in question.

I further feel that the statement, the inculpatory statement that was taken of the Defendant was freely and voluntarily given by him, and was the subject of a free mind, without any unlawful coercion or physical restraint made upon the Defendant.

Therefore, the motion to suppress the inculpatory statement which is State's Exhibit No. 6, is denied.

The next motion before me is a motion to suppress the identification evidence.

I have reviewed the pictures as presented to me, the statements as presented to me, and I do not find these photographs to be impermissibly suggestive. Accordingly, that motion is denied.

The last motion before me is to suppress evidence based on two search warrants, one for the premises and the other for the car of the Defendant. Both search warrants were, (Tm. 508) in my judgment, issued upon probable cause, and I do not feel that the Defendant has proven to my satisfaction that they were not issued based upon probable cause. They were both issued based upon the confession of Lewis, which was the subject of both search warrants and affidavits. And accordingly that motion to suppress both search warrants is denied.

* * *

(Tm. 509) MR. DePAUL: . . . But one thing is left open, Your Honor. Your Honor has not ruled with regard to the statement of State's Exhibit No. 4, which we moved to suppress along with the oral statements, Your Honor.

(Tm. 510) THE COURT: You are moving to suppress the exculpatory statement?

MR. DePAUL: Your Honor deems it that way - -

T E COURT: I haven't read it.

MR. DePAUL: State's Exhibit No. 4, I believe, is one we duly - -

THE COURT: I will rule on that, Mr. DePaul. And I find that the State has met its burden of showing that the delay in this case of nine hours between the time of arrest and the time that the statement was taken was necessary under the circumstances of this particular case.

RULING ON MOTION FOR NEW TRIAL

it wouldn't have been done, Mr. DePaul, the way it was done.

MR. DE PAUL: Thank you, Your Honor.

THE COURT: All right, Mr. DePaul. I have read the motion for new trial, and I have read the State's opposition to the motion for new trial. And I am going to deny the motion for new trial for the following reasons.

I think that your client received the benefits of all his rights. I think that your client was granted a fair and an impartial trial to the best of my ability, and that a jury found your client guilty beyond a reasonable doubt.

The only thing that troubles me in this case, and I intend to put it on the record, is whether or not the police in this case should have taken this man before a Commissioner. I have

read the Johnson versus the State of Maryland case innumerable times. I still do not understand in entirety what this case really stands for. And I want the Court of Appeals, not myself, I think it should come from the Court of Appeals, to tell the public of Maryland and the police that they do not have the right to question anybody that is arrested, after they are once arrested, that they must take them before a Commissioner immediately, that it's not proper police work to question anybody once they give them their rights.

I want the Court of Appeals to say that categorically. I do not believe that is the law. I believe that the police have a reasonable time in which to question anybody once (T. 18) having advised them of their rights.

And that is my judgment. And until the Court of Appeals tells me I am in error, and categorically states to the public and to the police that they cannot and must not question any person after he is arrested, that they must immediately take them before a Commissioner, then your position, Mr. DePaul, may be correct in this case.

However, based on my judgment, based on what transpired in five days here, I feel that your client had a fair trial. And a jury of his peers convicted him. Accordingly, your motion for a new trial is denied.

Now let's get to the business of sentencing. All right, Mr. DePaul, Mr. Martin, what do you all want to tell me?

MR. DE PAUL: Your Honor, we have perused the presentence investigation. I have gone over the entire investigation, including the psychiatric and psychological diagnostic evaluation with Mr. Meyer.

I must say, and I think it has to be said, I am frankly somewhat upset with the pre-sentence investigation in the regard that Mr. Meyer appears to be being held in a bad light by the Department of Parole and Probation because he would not in effect confess to them, and upon my instructions would not discuss the facts of the charges against him.

However, I am upset because of their attitude.

APPENDIX B

REPORTED

IN THE COURT OF SPECIAL APPEALS OF MARYLAND

No. 689

September Term, 1978

GENE THOMAS MEYER

v.

STATE OF MARYLAND

Morton
Moore
Lowe,
JJ.

Opinion by Moore, J.

Filed: October 9, 1979

A mother and her three-month old infant were stabbed to death in their Bowie, Maryland home. Appellant, Gene Thomas Meyer, was convicted of first degreee murder of the mother and second degree murder of the child and received sentences of life imprisonment and thirty years, to be served consecutively. On this appeal, the major issue presented involves Maryland District Rule 723 (M.D.R.) requiring an arrested person to be presented "without unnecessary delay" before a judicial officer. Appellant, relying upon *Johnson v. State*, 282 Md. 314, 384 A.2d 709 (1978), contends that two statements obtained from him by the police should have been suppressed as products of an unnecessary delay in presenting him before a District Court Commissioner. In opposition, the State argues: that *Johnson* should only be applied prospectively to arrests occurring after April 6, 1978, the date of the decision; and alternatively, that the delay in presentment was necessary, that the admission of the first statement, if erroneous, was harmless; and that the second statement was a product of deliberate reflection.

Appellant has also challenged an in-court identification allegedly made under "impermissibly suggestive circumstances;" the introduction of allegedly inflammatory color photographs of the crime scene and of the autopsy; the admissibility of opinions contained in the autopsy reports; the seizure of his automobile in Virginia by Prince George's County (Maryland) Police; and a jury instruction containing a reference to "probable cause." Finding no reversible error, we shall affirm.

I

The record of the suppression hearings discloses that, on September 23, 1977, Lon Alec Lewis, after finishing work, returned to his home in Bowie and found, in the kitchen,

the bodies of his 27-year old wife, and 3-month old baby, Heather. He summoned held from a neighbor, and the police were called. Both Carol and Heather had been the victims of an assailant who had brutally stabbed them to death with a knife.

Over the next two weeks, Lon Lewis fully cooperated with the police. He permitted them to search his home and consented to being interviewed. During the course of those interviews, Mr. Lewis admitted having a girlfriend in Texas who had been communicating with him by letters mailed to Mr. Lewis at the address of appellant, Gene Meyer. On October 6, 1977, a Prince George's County police officer visited the appellant at his Rockville, Montgomery County, apartment to obtain any of the Texas girlfriend's letters that Mr. Meyer might have been holding for Mr. Lewis. Although Mr. Meyer did not have any letters, he was interviewed, and a written statement was taken in which he discussed Mr. Lewis' Texas liaison. Mr. Meyer stated that he learned of Mr. Lewis' girlfrien when he and Mr. Lewis had spent a week in Texas attending a training program sponsored by their employer.

The next day, October 7, 1977, Lon Lewis was further questioned by the police. Early in the evening he admitted his complicity in the murders of his wife and child and was arrested.[1] Over the next few hours he gave a written statement to the police describing in detail an agreement between himself and Mr. Meyer in which the murders of their wives had been planned.

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[1]After the trial of the appellant herein, Mr. Lewis was tried and convicted as an accessory before the fact to the murders for which the appellant has been convicted as the principal. Mr. Lewis' conviction was recently reversed by the Court of Appeals, and the case was remanded for a new trial. *Lewis v. State*, 222 Md. ___, ___A.2d ___(1979) [No. 104, Sept. Term 1978, filed August 27, 1979].

Acting upon this information and the description provided by a witness who saw a man approaching the Lewis home shortly before the murders were committed, the police obtained a warrant for the arrest of the appellant. At 7:15 a.m., on October 8, 1977, Mr. Meyer was arrested at his apartment in Rockville, handcuffed, placed in the back seat of a police cruiser, and given his *Miranda* warnings.[2]

Detective David Hatfield, who rode in the police cruiser during the trip to the Bureau of Criminal Investigation (BCI) in Forestville, Prince George's County, from Rockville, testified at the pretrial suppression hearing and described appellant's reaction when told of the Lon Lewis statement. Mr. Meyer wanted to see the Lewis statement and told Detective Hatfield that the police would have to "prove it" because it was Mr. Lewis' word against his.

Uponing arriving at BCI, the appellant was placed in an interrogation room, unhandcuffed, and offered some coffee. Detective Hatfield obtained the Lewis statement, and together the two men spent almost two hours reading the 14-page typed and handwritten document. Detective Hatfield testified that Mr. Meyer, after reading the statement, offered to tell his side of the story: "[H]e said he would give a truthful response."

Over the next six hours, until shortly before 4 p.m., Mr. Meyer gave a statement which was transcribed by Detective Hatfield. In this statement (the first statement) the appellant denied any involvement in the murders. Instead, he blamed Lon Lewis, stating "When I heard the news that she got killed I figured he did it or got someone to do it." Appellant also

[2]*Miranda v. Arizona*, 384 U.S. 436 (1966).

expanded upon his previous discussion of the Lewis Texas tryst, and he admitted being at the Lewis home on Thursday, September 22, 1977, the night before the murders. He also acknowledged owning a cream-colored suit and a briefcase.

After giving this first statement, the appellant was transported to Upper Marlboro from BCI and presented before District Court Commissioner Michael J. O'Brien at 4:15 p.m. The Commissioner certified that he informed the appellant of his rights set forth in the charging document,[3] and the appellant similarly signed an acknowledgement of receipt of such rights.

On the trip back to BCI from the Commissioner, Mr. Meyer indicated that he was hungry. A steak dinner was purchased, and the appellant ate his dinner back at BCI in an interrogation room. Detective Corporal Michael K. Morrissette was present while the appellant had dinner, and according to Corporal Morrissette's testimony he engaged the appellant in general conversation, discussing his upbringing, background, job, and marriage.

At 6 p.m., Corporal Morrissette read the *Miranda* warnings to the appellant. He orally waived his rights and expressed a willingness to talk to the police. During the next three hours, the story gradually unfolded. The appellant admitted killing

[3]M.D.R. 723(b) (2) provides that the "judicial officer shall require the defendant to read the advice of right to counsel printed on the charging document. . ." and "shall certify in writing that the defendant has read the advice as to the right of counsel in his presence. . . ." Commissioner O'Brien did make such a certification. The contents of the advice are prescribed by M.D.R. 711 (a) and were accurately reproduced in the charging document in the instant case.

3-month old Heather, but stated that it was an accident. He also confessed to the stabbing of Carol Lewis. At 9 p.m., there was a twenty-minute break during which Corporal Morrissette prepared to take a written statement from the appellant. From 9:20 to 10:00, the two men worked on a written statement (the second statement); Corporal Morrissette typed each of the four pages and Mr. Meyer signed each page at the bottom. After the confession was completed, the appellant was asked to sign a written waiver of rights, but he refused. Shortly after 10:00 p.m., Mr. Meyer was transported to the Prince George's County Detention Center from BCI.

Hearings on the appellant's motion to suppress evidence, including the first and second statements, were held over a period of four days during March and April, 1978.[4] Judge Jacob S. Levin denied the motions. Trial commenced April 20, 1978 on two counts of murder in the first degree. On April 26, 1978, the jury returned verdicts finding the appellant guilty of the first degree murder of Carol Lewis and the second degree murder of Heather Lewis.

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[4]There were several conflicts between the police officers and the appellant in the testimony presented at the pretrial suppression hearings. Mr. Meyer testified that the police continually called him "Crazy Man"; told him he had no rights; denied him food, the use of bathroom facilities, and access to a telephone; and hit him on the head whenever he asked for an attorney. This testimony was flatly contradicted by the testimony of Officers Hatfield and Morrissette. Judge Levin chose to believe the police officers' version. The credibility of witnesses at a pretrial suppression is for the determination of the trial judge, *Boone v. State*, 2 Md. App. 80, 95-96, 233 A.2d 476, 485 (1967), subject to reversal only for a manifest abuse of discretion. *See Watson v. State*, 282 Md. 73, 84, 382 A.2d 574, 580, *cert. denied*, 437 U.S. 908 (1978); *Smith v. State*, 20 Md. App. 577, 585-86, 318 A.2d 568, 574-75 (1974), *cert. denied*, 420 U.S. 909 (1975).

II

The appellant first urges that the trial judge was in error when he denied the appellant's motion to suppress the two statements taken after the appellant's arrest. It is his contention that the police violated M.D.R. 723 by unnecessarily delaying his initial appearance before a judicial officer. Citing *Johnson v. State*, 282 Md. 314, 384 A.2d 709 (1978), he argues that the first statement should have been suppressed because it was taken prior to his initial appearance and during a period of unnecessary delay.[5] Appellant also urges us to rule that the second statement should have been suppressed for two reasons: first, the initial appearance before Commissioner O'Brien was defective because the Commissioner did not read the complete "advice of right to counsel" required by M.D.R. 723(b); second, the statement was "tainted by the previous illegal detention," and does, therefore, fall within the *Johnson* exclusionary rule.

Footnote 4 continued:

At trial the jury also heard the conflicting testimony concerning the treatment of the appellant by the police. We note that the appellant does not, on appeal, challenge the voluntariness of his statements or the adequacy of his waiver of his *Miranda* rights.

[5]It may seem anomalous that the appellant is seeking to exclude a largely exculpatory statement. As we read the broad language of the *Johnson* case, it applies to "any statement" given to the police in violation of M.D.R. 723 without regard to the statement's content. *Id.* at 328, 384 A.2d at 717. We note, as did the Supreme Court that "no distinction may be drawn between inculpatory statements and statements alleged to be merely 'exculpatory.' If a statement made were in fact truly exculpatory it would, of course, never be used by the prosectuion." *Miranda v. Arizona*, 384 U.S. 436, 477 (1966), *quoted in Milhouse v. State*, 31 Md. App. 571, 576, 358 A.2d 262, 265 (1976).

THE FIRST STATEMENT

In response to the appellant's argument that the period during which the first statement was taken constituted an "unnecessary delay" in bringing the appellant before a judicial officer, the State first urges us to conclude, as did the trial judge, that the nine hour delay was necessary under the circumstances presented here. Appellee points out that the appellant had to be transported to BCI from his home in Rockville, processed, and then transported to the Commissioner from BCI; but concedes that, at most, these events consumed a total of eighty minutes. Any contention that a period of eighty minutes establishes a necessity for a nine hour delay is patently without merit.

In *Johnson*, the Court of Appeals listed five examples of necessary delay. *Id.* at 329, 384 A.2d at 717. The examples were intended to be just that; they were not intended to be an entire litany of occurrences from which the State is required to justify a delay in the initial appearance of a defendant before a judicial officer. *Lewis v. State*, ___ Md. ___, ___ A.2d ___ (1979) [No. 104, Sept. Term 1978, filed August 27, 1979, slip opinion at 15].

M.D.R. 723, while allowing for necessary delays in presenting a defendant before a judicial officer, does not countenance a delay for the principal purpose of obtaining a statement or a confession from the defendant. The Maryland Rule has its antecedents in the federal *McNabb-Mallory* Rule. *McNabb v. United States*, 318 U.S. 332 (1943); *Mallory v. United States*, 354 U.S. 449 (1957). In the latter case the Court made it plain that "the delay must not be of a nature to give *opportunity* for the extraction of a confession." *Id.* at 455 (emphasis added);

see also United States v. Meachum, 197 F. Supp. 803 (D.D.C. 1961); *Commonwealth v. Davenport*, 471 Pa. 278, 370 A.3d 301 (1977). M.D.R. 723 is designed to insure that even a defendant arrested pursuant to a warrant is promptly brought before a neutral judicial authority who can formally apprise the defendant of his rights and ascertain his desires with regard to legal counsel.[6] *See, e.g., Watson v. United States*, 234 F.2d 42 (D.C. Cir. 1957).

In the instant case, Mr. Meyer was arrested at 7:00 a.m. and taken to BCI. He was informed of the existence of the Lewis statement implicating him in the murders; he requested to see the statement and then offered his own version denying any involvement in the brutal stabbings. In *Commonwealth v. Abu-Ibn Hanifah Bey*, 462 Pa. 533, 341 A.2d 907 (1975), the Pennsylvania Supreme Court held that a delay for the purpose of confronting a defendant with a statement implicating him in a robbery and taking his statement thereafter is "unnecessary" under the terms of a similar Pennsylvania rule. Here an obvious opportunity existed for the extraction of a confession after the appellant's arrest and prior to his initial appearance. It was error to admit the first statement because it was obtained in violation of M.D.R. 723. *Johnson v. State*, 282 Md. 314, 384 A.2d 709 (1978).

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[6]We note that the Court of Appeals in *Lewis* found a six and one-half hour delay to be necessary where its sole purpose was to transcribe a confession given by the defendant *prior* to his arrest. *Lewis v. State*, ___ Md. ___, ___ A.2d ___ (1979) [No. 104, Sept. Term 1978, filed August 27, 1979]. Of course, a totally different situation is presented where, as in the instant case, the arrest *precedes* any questioning leading to a statement or confession.

Upon our own independent review of the record, however, we are convinced beyond a reasonable doubt that the erroneous admission of the first statement in no way influenced the jury's verdict. The error is, therefore, harmless and reversal of the conviction is not required. *Dorsey v. State*, 276 Md. 638, 659, 350 A.2d 665, 678 (1976). *See also Chapman v. California*, 386 U.S. 18 (1967); *Harrington v. California*, 395 U.S. 250 (1969); *Fahy v. Connecticut*, 375 U.S. 85 (1963). It is of no significance that the error complained of is not of constitutional dimension, for Maryland has but one harmless error rule for criminal cases. *Dorsey, id.* at 657-59, 350 A.2d at 677-78.

In the erroneously admitted first statement, Mr. Meyer vehemently denied any involvement in the murders; he did accuse Lon Lewis of complicity in the crimes. He also expanded somewhat on the information he had previously supplied to the police concerning Mr. Lewis' Texas girlfriend.[7] Mr. Meyer did admit owning a cream-colored suit and a black briefcase. The major portion of the first statement, however, was devoted to the appellant's denial of culpability in the case.

The evidence in the case was overwhelming. The appellant's confession detailing the manner of the stabbings was, as we hold, *infra*, properly received into evidence. *Cf. Milton v. Wainright*, 407 U.S. 371 (1972) (erroneous admission of inculpatory statement was harmless in light of other properly admitted confessions). An eyewitness identified the appellant, both in and out of court, as the person she saw approaching the Lewis home shortly before the murders were committed. In addition, there

[7]The prior statement, taken two days before appellant's arrest, was admitted into evidence; the appellant does not, on appeal, challenge its admission.

was independent evidence of the ownership of the briefcase: a picture of the briefcase lying on the back seat of the appellant's automobile was admitted along with the briefcase itself. Other evidence clearly linked the appellant to the crime; expert testimony concerning the nature of the wounds on the victims' bodies and the strength required to inflict such wounds; and blood found on the appellant's shoes.

The facts contained in this first statement were either cumulative of the other evidence or insignificant in light of the other evidence. Moreover, the essence of the statement was exculpatory. Its admission into evidence, while erroneous under M.D.R. 723(a), was harmless error in this case. *See Bartram v. State*, 33 Md. App. 115, 152-56, 364 A.2d 1119, 1141-43 (1976), *aff'd*, 280 Md. 616, 374 A.2d 1144 (1977); *Holloway v. State*, 26 Md. App. 382, 395-96, 339 A.2d 319, 326-27 (1975).[8]

THE SECOND STATEMENT

Appellant first asserts that Commissioner O'Brien failed to give the appellant the full advice of right to counsel as required by M.D.R. 723(b) as set out in M.D.R. 711(a). This argument is based on the testimony of Commissioner O'Brien at the pretrial suppression hearing and at trial when he was

[8]Because of our disposition of the issues under M.D.R. 723 we do not consider the State's argument that the *Johnson* case should be applied prospectively only. Accordingly, we express no view at this time on the merits of the State's argument. *Cf. Shope v. State*, 41 Md. App. 161, 396 A.2d 282 (1979). In *Lewis v. State*, ___Md. ___, ___A.2d ___ (1979) [No. 104, Sept. Term 1978, filed August 27, 1979], the same argument was addressed to the Court of Appeals but the Court in its disposition of the case found it unnecessary to decide the question.

asked to recite the advice given to the appellant; his testimony, while patterned on the *Miranda* warnings, did not specifically track the langugage in M.D.R. 711(a).

We do not think that appellant's argument can be sustained. It overlooks the acknowledgements signed by both the Commissioner and the appellant at the initial appearance. *See* n.3, *supra*. The "advice to right to counsel" that appears on the charging document, which appellant by his signature acknowledged reading and receiving, conforms with the requirements of M.D.R 711(a). In light of this documentary evidence indicating compliance with M.D.R. 723(b), the appellant's assertion premissed on a mere imprecision in the Commissioner's testimony must fail.

It is also argued by the appellant that the second statement in which he confessed to the murders should have been suppressed because of the preceding illegal detention which violated M.D.R. 723(a). Since we have found that the appellant's initial appearance before the Commissioner was unnecessarily delayed by the police, we must focus upon the circumstances surrounding the second statement, specifically to ascertain whether it was an "independent act" and a product of "deliberate reflection." *Johnson v. State*, 282 Md. 314, 330, 384 A.2d 709, 718 (1978).

A similar situation was presented in *Johnson*: the police had taken two statements from the defendant, one prior to his initial appearance and one following the appearance. In ruling that the second statement should have been excluded, Judge Levine stated for the Court:

> "Appellant's second statement, admitting responsibility for the Rainbow Cleaners holdup and shooting, which was given almost immediately upon appellant's return from the commissioner on January 31, should likewise have been suppressed. *We cannot say, on the record before us, that the second confession was an independent act, occurring after time for deliberate reflection and therefore free from the taint of the preceding illegal detention.*"

Id. at 330, 384 A.2d at 718 (Emphasis added.)

In our judgment the State has met its burden of showing in this case that the second confession was an independent act and a product of deliberate reflection. Appellant's first statement was essentially exculpatory; he denied any involvement in the murders. In *Johnson*, the defendant "all but confessed" in the first statement, *id*. at 318, 384 A.2d at 711; in the second statement he "confessed outright." *Id*. at 318, 384 A.2d at 712. Moreover, appellant here completed his first statement at 3:45 p.m. He was then driven to Upper Marlboro from BCI, presented before Commissioner O'Brien, and transported back to BCK. During the return trip, a stop was made in order to purchase, at his request, a steak dinner.

Questioning by Corporal Morrissette did not begin until after Mr. Meyer had finished his dinner at 6:00 p.m. – almost two hours after his initial appearance before the Commissioner. The questioning lasted for three hours; there was a twenty-minute break, and then the written second statement was prepared between 9:20 p.m. and 10:00 p.m. – a period of five hours after the appellant's initial appearance. Although the appellant signed the bottom of each page of the second statement, when presented with a written waiver of rights, he

declined to sign that paper, thus indicating that he was fully cognizant of his actions at the time. We also note that Corporal Morrissette testified that he gave the appellant full *Miranda* warnings at the start of the 6:00 p.m. interrogation session and that the appellant orally agreed to waive those rights and to proceed with the questioning.

In evaluating the circumstances surrounding a confession which follows upon the heels of an illegal detention, we do not apply a rigid talismanic test. *See generally United States v. Close*, 349 F.2d 841, 851 (4th Cir. 1965), *cert. denied*, 382 U.S. 992 (1966); *Wilkins v. Maryland*, 402 F. Supp. 76, 83 (D. Md. 1975), *aff'd*, 538 F.2d 327 (4th Cir. 1976), *cert. denied*, 429 U.S. 1044 (1977). Instead, we consider all of the circumstances surrounding the confession, including the time, place, and manner of its taking; intervening events; its content compared to prior statements given by the appellant; and other factors reflecting upon the appellant's alleged free will in making the statement. The list is not exclusive. Taking all of the foregoing into consideration, we hold that the State demonstrated that the second statement was a product of the appellant's free will divorced from the preceding illegal detention. Judge Levin was correct in denying the motion to suppress the second statement, when he said:

> "The inculpatory statement that was taken from the Defendant was taken subsequent to his being taken before the commissioner, and after a time for eating and a time for reflection, and a time for deliberation. It is my judgment that the Johnson v. State of Maryland case is distinguishable from the facts in this case. . . ."

III

On the day Carol and Heather Lewis were murdered, 12-year old Darlene Brown observed a man walking up the driveway toward the front door of the Lewis home between 4:45-5:00 p.m. At that time Darlene was walking down the driveway of her house across the street from the Lewis home. That night after the murders had been discovered, Darlene gave the police a written description of the man she had seen earlier. Four days later she made another written statement describing him. Both descriptions indicated that the suspect was in his late twenties, clean shaven, over six feet tall, and had blondish hair. Darlene also told the police that he was wearing a light-colored suit and that he was carrying a briefcase.

From this description, the police made a composite drawing. Then, on October 8, 1977, the day of appellant's arrest, Corporal Morrissette brought six pictures to Darlene's home and asked her to look at the pictures to see if she recognized the man she had seen on the Lewis driveway fifteen days earlier. After discarding a picture of Detective Kowalski who had worked on the composite drawing with her, she carefully considered the other five photographs and picked out the appellant.

Appellant has continually argued that the photographic array was impermissibly suggestive and would, therefore, taint an in-court identification.[9] The photographs are part of the

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[9]The trial judge conducted suppression hearings both before trial and during trial; he concluded that there was no primary illegality that would taint the judicial identification of the appellant by Darlene Brown. *Cf.* Green v. State, 281 Md. 483, 380 A.2d 43 (1977).

record and we have independently examined them and the testimony concerning the conduct of the array. Although the photographs were not absolutely uniform, they were substantially similar. We are unable to find that the photographic array, under "the totality of the circumstances surrounding it, was so unnecessarily suggestive as to give rise to a very substantial likelihood of irreparable misidentification. . . ." *Smith and Samuels v. State*, 6 Md. App. 59, 67, 250 A.2d 285, 290 (1969), *cert. denied*, 397 U.S. 1057 (1970). Indeed, the photographic array shown to Darlene Brown does not have even threshold suggestiveness, and therefore, appellant has not carried his initial burden requiring a response by the State. *Godwin v. State*, 38 Md. App. 716, 727, 382 A.2d 596, 603 (1978). *See McDowell v. State*, 31 Md. App. 652, 663, 358 A.2d 624, 639 (1976); *Martin v. State*, 40 Md. App. 248, 255, 389 A.2d 1374, 1378 (1978).

At trial, but out of the presence of the jury, Darlene, who had never been inside a courtroom before, took the witness stand and was asked to make an in-court identification of the man she saw at the Lewis home. She stood up and pointed to co-counsel David M. Martin, seated at the counsel table with principal trial counsel, Joseph A. DePaul. Appellant had been previously seated among the courtroom spectators. After a bench conference during which the State argued that the defense had engaged in misleading tactics, the judge ordered the bailiff to bring in the jury. However, before the bailiff could leave, Darlene asked permission to try again because "I saw a couple of people I didn't see before."

Over vigorous objection by the defense and after some brief questioning by the court, all males in the courtroom were ordered to stand, and Darlene was permitted to walk around

the courtroom eliminating the males one by one. When a few men remained standing, she returned to the stand and identified the appellant. She was then questioned by the court and denied receiving any assistance or prompting. She attributed her need for a second opportunity to her failure to look closely, in the first instance, at the men in the back of the courtroom.

Before the jury returned, appellant's counsel produced six witnesses who testified that Darlene appeared to have had eye-contact with some spectators during the bench conference that followed her erroneous first identification. None of these witnesses heard Darlene speak, although one witness stated that she appeared to mouth some words. After the testimony was concluded, the jury returned and the court, over the appellant's continuing objection, allowed Darlene to identify the appellant.

As we understand appellant's argument, it is premised upon an assumption that the judicial identification in the jury's presence was tainted at the hearing immediately preceding it. During the direct, cross, redirect, and recross examinations of the youthful witness, the circumstances of both her pretrial photographic identification and her judicial identification were brought out before the jury. As Judge Moylan has stated for this Court:

> "An in-court identification, as any other evidence, civilly or criminally, may be tested and probed by the traditional device for such testing and probing - the use of cross-examination. . . . What happens in the courtroom is open for judge and jury to see and does not call for the Sixth Amendment's special ventilation of musty and secret station house proceedings."

Green v. State, 35 Md. App. 510, 521, 371 A.2d 1112, 1119, *reversed on other grounds*, 281 Md. 483, 380 A.2d 43 (1977). The examination by appellant's counsel of the witness in this case was rigorous and probing. The jury became aware of the erroneous first identification made out of their presence and could weigh that factor in assessing Darlene's credibility. Moreover, the court conscientiously afforded the appellant an opportunity to challenge Darlene's judicial identification before it was revealed to the jury. Upon our independent review of the record, we find no error in allowing Darlene to identify the appellant.

IV

Over defense objection, thirty-five pictures were introduced into evidence. Appellant contends that because "the photographs were unnecessary and prejudicial as tending to inflame the passions of the jury," the trial judge abused his discretion in admitting them.

The admission of photographs is within the discretion of the trial court, and its determination will not be disturbed on appeal unless it clearly abused its discretion in admitting them. *Carroll v. State*, 11 Md. App. 412, 414-15, 274 A.2d 677, 678-79 (1971). *See Rasnick v. State*, 7 Md. App. 564, 569-70, 256 A.2d 543, 546 (1969), *cert. denied*, 400 U.S. 835 (1970); *McLaughlin v. State*, 3 Md. App. 515, 523, 240 A.2d 298, 303 (1967). *See also Clark v. State*, 238 Md. 11, 207 A.2d 456 (1965).

Appellant has failed in his brief to indicate the nature of the prejudice claimed as to thirty-one of the thirty-five photographs.[10] We are unable to find any error by the trial court in admitting the thirty-one photographs.

Of the remaining four photographs, two showed the bodies in the positions in which they were originally found and two were autopsy photographs showing the multiple stab wounds. Originally, the State attempted to introduce thirteen photographs showing the bodies at the crime scene and prior to the autopsy. The record demonstrates that Judge Levin assiduously evaluated each of the thirteen photographs, selecting four that he thought were appropriate. No abuse of discretion is disclosed by the record, and appellant's contentions to the contrary must fail.

V

The reports of the autopsies performed on the victims and received in evidence contained identical statements that: "The manner of death is homicide." Appellant sought to strike those statements at trial prior to the reports being received, and now urges the same point as a basis for a reversal of his convictions on appeal. We find no error.

Appellant's reliance on *Benjamin v. Woodring*, 268 Md. 593, 303 A.2d 779 (1973) is misplaced. In that civil case, the decedent's death was caused by an overdose of barbiturates; the medical examiner's conclusion of suicide was based on

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[10]These were pictures of the crime scene, the appellant's automobile, and the appellant. The victims' bodies were not fully visible in any of the crime scene photographs.

facts extrinsic to the autopsy supplied by Mrs. Benjamin, the plaintiff. Moreover, the manner of death was central to the dispute between the parties.

The medical examiner's conclusion in the instant case that the deaths of Carol and Heather Lewis were homicidal was a product of the autopsy examinations themselves without the need for extrinsic evidence. Obviously, the multiple stab wounds inflicted upon both bodies were not accidental, natural, or suicidal; they were, therefore, homicidal Moreover, the autopsy statements were perfectly consistent with the appellant's defense. In his opening statement, appellant's counsel argued: "There is no question that Mrs. Lewis and Heather Lewis were brutally slain that day in Bowie. There isn't any dispute over that. Indeed, we readily concede that." This position was reiterated in the closing argument when appellant's counsel informed the jury that Mr. Meyer "is not telling you to disregard the fact that poor Mrs. Lewis and her daughter were killed."

Since the manner of death was undisputed, leaving appellant's criminal agency as the primary issue, we think the case fits squarely within our prior decision in *Malekar v. State*, 26 Md. App. 498, 338 A.2d 328 (1978). What Judge Moylan said there, applies with equal force here:

> "The conclusion that the cause of death here was homicidal, stemming from the obvious physical fact of strangulation, was not a product of investigative activity on the part of the Medical Examiner's Office but was a direct product of the autopsy examination itself. The conclusion, moreover, was completely consonant with the appellant's theory of

> the case, since his version of the fatal incident had been that two robbers burst into the home and killed his employer. We see neither error nor prejudice."

Id. at 510, 338 A.2d 334-35. Similarly, in this case we see no error and it is obvious that appellant has suffered no prejudice.

VI

Appellant objects to the seizure by Prince George's County Police of his 1974 Maverick parked in his mother-in-law's driveway in Arlington, Virginia. Specifically, he contends that "the initial warrantless seizure of the car in Virginia was illegal, and tainted the subsequent search pursuant to the warrant in Prince George's County." The record unequivocally demonstrates that the police obtained the express permission of Hortensia Meyer, appellant's wife, for the seizure of the automobile. As such, she had the authority to consent to her automobile being towed from Virginia to Maryland. Appellant's objection to the seizure is without merit. *Wade v. Warden*, 278 F. Supp. 904 (D. Md. 1968); *United States v. Carter*, 569 F.2d 801 (4th Cir. 1977), *cert. denied*, 435 U.S. 973 (1978).

VII

During the early stages of the trial, the State attempted to introduce the search warrants, applications therefor, and supporting affidavits that had been obtained for the search of appellant's apartment and automobile. Contained within the applications was the confession of Lon Lewis that incriminated the appellant. In proffering the materials, the State indicated that it wanted to "show to this jury that the police didn't go

like storm troopers into that home." Appellant objected to the introduction of the materials. The court agrred with appellant and refused to admit them; however, as a compromise it instructed the jury:

> "All right, ladies and gentlemen of the jury, there were two exhibits, 44 and 45. One is a search warrant for a car. And the other warrant is a search warrant for a premises. I am not going to admit these search warrants, but I instruct you that these search warrants were issued by two separate Judges and signed by them to be issued. And they were executed.
>
> And I further instruct you that no search warrant is issued by a judge, either here or in Montgomery County, and this is applicable to both of these search warrants, that they are only issued based upon probable cause."

It is the appellant's contention that the instruction was improper "[e]specially since the technical concept of 'probable cause' was not explained to the jury. . . ." He claims that the jury could have been misled to his prejudice into believing that the issuance of the search warrants was evidence of his guilt.

We believe that it would have been preferable for the trial court to have omitted any reference to probable cause or, once having made such a reference, to have explained its technical meaning to the jury. Nevertheless, we do not find that the instruction as given constitutes error. The authority cited by appellant, *Dempsey v. State*, 277 Md. 134, 355 A.2d 455 (1976), is inapposite. There the court informed the jury of the

court's finding that a confession was voluntary, an issue which the jury had the duty ultimately to decide for itself. Here the instruction, coming early in the trial, in no way usurped or interfered with the jury's role. Furthermore, there was extensive prior testimony, to which no objection was made, that both warrants had been "approved" by a judge. We find no prejudice.

JUDGMENTS AFFIRMED;
COSTS TO BE PAID BY
APPELLANT.

APPENDIX C

GENE THOMAS MEYER	*	In the
	*	Court of Appeals
	*	of Maryland
	*	
v.	*	
	*	
STATE OF MARYLAND	*	Petition Docket No. 348
	*	September Term, 1979
	*	No. 689, September Term,
	*	1978 Court of Special Appeals

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: December 20, 1979.

APPENDIX D

AMENDMENTS TO THE CONSTITUTION

[Amendment V]

[Rights of Accused in Criminal Proceedings]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[Amendment VI]

[Right to Speedy Trial, Witnesses, etc.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

[Amendment XIV]

Section 1.

[Citizenship Rights Not to Be Abridged by States]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

MARYLAND DISTRICT RULES

Maryland District Rule 711 provides in pertinent part:

"a. General Requirements.

A charging document . . . also shall contain the following statement:

TO THE PERSON CHARGED:

1. It is important that you read this document very carefully, as it charges you with the commission of a crime.

2. If you have been arrested, you are entitled to be taken promptly before a judicial officer who shall determine your eligibility for release pending your hearing or trial.

3. If you are found guilty of this offense, you could be punished by a fine or by imprisonment, or both.

4. A lawyer can give important assistance to you in the trial of this case. He can help to determine whether there are any defenses to the charges against you or any circumstances helpful to you that should be brought out at the trial. Even if you intend to plead guilty, a lawyer can help you by developing and presenting to the court information which would affect the sentence or other disposition of the court.

5. You have the absolute right to hire a lawyer at your own expense to assist you in defending yourself against this charge. If the offense is one that is punishable by imprisonment, and you want a lawyer and are too poor to hire one, the State will supply you with a lawyer (the Public Defender) free of charge.

6. If you intend to hire a lawyer or to seek the assistance of the Public Defender, you must do so immediately and you can not wait until the day of the trial. If you want to contact the Public Defender, you may obtain his telephone number and address by looking for "Public Defender" listed under "Maryland (State of)" in the telephoning directory for the county seat nearest to where you must stand trial, or for Baltimore City if you are to stand trial in that City.

7. If you have not hired your own lawyer or contacted the Public Defender by the time you appear for trial, the judge could decide that you have waived your right to a lawyer and he could compel you to go to trial without the assistance of a lawyer.

Maryland District Rule 723 provides in pertinent part:

Rule 723. Initial Appearance.

"a. After Arrest.

A defendant who is detained pursuant to an arrest shall be taken before a judicial officer without unnecessary delay and in no event later than the earlier of (1) 24 hours after arrest or (2) the first session of court after the defendant's arrest upon a warrant or, where an arrest has been made without a warrant, the first session of court after the charging document is filed. A charging document shall be filed promptly after arrest if not already filed.

b. Procedure.

At the initial appearance of the defendant, the judicial officer shall proceed as provided in this section.

1. Advice of Charges.

The judicial officer shall provide the defendant with a copy of the charging document, if he has not already been so provided, and shall inform the defendant of each offense with which he is charged.

2. Advice of Right to Counsel.

The judicial officer shall require the defendant to read the advice of right to counsel printed on the charging document, in accordance with M.D.R. 711 a (Charging Document - Content - General Requirements), or shall read that advice to the

defendant if the defendant is illiterate or for any other reason unable to read that advice himself. The judicial officer shall certify in writing that the defendant has read the advice as to the right of counsel in his presence, or that he has read that information to the defendant, as the case may be.

3. Pretrial Release Determination.

Subject to subsection 4 of this section the judicial officer promptly shall determine the defendant's eligibility for pretrial release pursuant to M.D.R. 421 (Pretrial Release).

* * *

5. Advice of Preliminary Hearing.

When a defendant has been charged with a felony which is not within the jurisdiction of the court and he has not been indicted, the judicial officer shall advise the defendant that he has a right to request a preliminary hearing if the request is made then or within ten days thereafter and that his failure to make a timely request will result in the waiver of a preliminary hearing.

6. Trial or Preliminary Hearing Date.

At the intial appearance of the defendant, if the offense is within the jurisdiction of the court, the judicial officer shall set the date and time for trial, or notify the defendant that he will be so advised by the clerk. If the offense is a felony which is not within the jurisdiction of the court and the defendant at the time of his initial appearance requests a preliminary

hearing, the judicial officer shall set the date and time for the preliminary hearing, or notify the defendant that he will be so advised by the clerk.

c. Certification of Judicial Officer.

The judicial officer shall certify in writing that he has complied with this Rule.

d. Transfer of Papers by Clerk.

As soon as practicable after the initial appearance by the defendant, the judicial officer shall file all papers with the clerk of the court or shall direct that they be forwarded to the circuit court if the charging document is filed there."